Yeoh Lam Beng v United Asian Bank Bhd & Anor

HIGH COURT (IPOH) – CIVIL SUIT NO 22-112-88
ABDUL MALEK J
5 AUGUST 1988

Civil Procedure – Injunction – Plaintiff claiming to be employee of company – Receiver and manager appointed – Whether contract of employment terminated – Injunction against receiver and manager – Balance of convenience – Status quo

Companies and Corporations – Appointment of receiver and manager of company – Whether contract of employment previously made and subsisting between company and employee terminated

Labour Law – Employment – Termination – Appointment of receiver and manager – Whether contract of employment previously made and subsisting between company and employee terminated

The plaintiff had been engaged by Taman Eden Sdn Bhd ('TESB') in May 1987 to manage the durian orchard on their land. As a result, he had incurred some expenditure in the management of the orchard. He claimed that he was entitled to a 50% share of the proceeds, after deduction for his expenses for the upkeep and maintenance of the orchard, from the sale of the durian crop for each year. The land was charged by TESB to the first defendant. On 10 May 1988, the first defendant appointed the second defendant as the receiver and manager of TESB. The plaintiff alleged that subsequently the second defendant's agent had requested him to continue managing the orchard until the durians were harvested. The plaintiff also alleged that the agent had promised to pay for various expenses incurred by the plaintiff in connection with the orchard and that in consequence the plaintiff obtained a bank loan of $10,000 on 28 May 1988. The plaintiff also claimed that the agent had offered to engage the plaintiff as the manager of the orchard at a certain salary but that the plaintiff had refused. According to the plaintiff, the agent then appointed his own manager to run the orchard and had taken over control of the orchard and of the crop.

The plaintiff commenced legal proceedings and on 15 June 1988, he obtained an injunction restraining the defendants whether by themselves or their servants or agents or otherwise from managing, dealing with, interfering or entering the land pending the disposal of the suit. The defendants applied on 20 June 1988 for an order that the injunction be dissolved and that the plaintiff whether by himself or his servants or agents be restrained from managing, dealing with, interfering or entering the said land until further order. In an affidavit filed on behalf of the defendants, the agent said that he was only prepared to engage the plaintiff from 10 May 1988 after consulting the first defendant. He denied all the other allegations made by the plaintiff and said that it was the plaintiff who had made an offer of $2,500 per month or 35% of the harvest proceeds to be engaged as manager of the orchard. The agent said that he told the plaintiff that the offer was not acceptable and sought a higher offer acceptable to the defendants by advertising for offers. The agent also said that the plaintiff, when told that the defendants were not engaging him, insisted on payment to him of a sum of $50,000 for maintaining the orchard from the time of his appointment and $10,000 for the period during which he worked.

It was contended, inter alia, for the plaintiff that the second defendant had represented to him that the contract between the plaintiff and TESB would be continued and that this was an issue to be tried and that in consequence, the plaintiff had expended more money on the project. It was further contended that the second defendant had never terminated the contract and had stepped into the shoes of TESB and that in effect therefore they had adopted the contract. It was also contended that compensation would not be adequate for the plaintiff as vast sums of money had been expended.

Held, dismissing the defendants' application:

(1) The plaintiff was employed by TESB as affirmed by him in his affidavit.

(2) The appointment of a receiver and manager as agent of the company does not itself automatically terminate contracts of employment previously made and subsisting between the company and all its employees.

(3) In three exceptional circumstances, however, such appointment will result in termination of employment contracts, viz:

(a) where the appointment of a receiver is accompanied by a sale of the business of the company;
(b) where the receiver enters into a new agreement with a particular employee that may be inconsistent with the old contract; and
(c) where the continuation of the employment of a particular employee is inconsistent with the role and function of a receiver and manager.

(4) In the instant case, since the contract had not been terminated by the second defendant on their appointment as receiver and manager and that none of the three exceptions stated applied, upon a balance of convenience, it was better for the status quo to be maintained as at 15 June 1988 when the injunction was granted.

Legislation referred to
Specific Relief Act 1950 ss 20(1)(a), (b), 54(f)

Ng Seng Lee for the plaintiff.
WJ Concisom and *S Gunasegaran* for the defendants.

Cur Adv Vult

Abdul Malek J: On 15 June 1988, upon a certificate of urgency, the plaintiff was granted an order that the first and second defendants be restrained whether by himself or by his servants or agents or otherwise from managing, dealing with, interfering or entering the land at Mukim Batang Padang Lot Nos 1657, 1385, 1692 and 4833 at the 10th mile, Jalan Pahang, Tapah, (hereinafter called 'the said land') pending the disposal of the suit.

In the affidavit accompanying the summons-in-chambers, the plaintiff had averred that sometime in May 1987 Taman Eden Sdn Bhd (hereinafter called 'TESB') had appointed him as manager of the durian orchard on the said land with the express term that he was entitled to a 50% share of the proceeds after deduction for his expenses for the upkeep and maintenance of the said orchard from the sale of the durian crop for each year that he was employed by TESB.

The plaintiff further stated in his affidavit that he had expended considerable sums of money in the management of the said orchard. In February 1988, a group

of men who he discovered were from the first defendant's bank came to look around. In April 1988, the first defendant's group of men came again led by one Dunstan who told the plaintiff's kepala Kong Fook Yee and his other workers that they were not going to interfere with the orchard as things had improved since their last visit.

On 10 May 1988, the first defendant appointed the second defendant as receiver and manager of TESB. Subsequently, the second defendant's agent, Edwin Chew, requested the plaintiff to continue managing the orchard until the durians were harvested. He also promised to pay for the fertilizers, insecticides and other chemicals in the plaintiff's possession and for the workers' salaries and the orchard's upkeep. In consequence, the plaintiff obtained a bank loan on 28 May 1988 amounting to $10,000.

The plaintiff also stated in his affidavit that Edwin Chew offered to engage the plaintiff as the orchard's manager at a salary of $2,500 per month without any share in the proceeds but the plaintiff refused as he was only interested in harvesting the durians and sharing the proceeds. On 1 June 1988, Edwin Chew appointed his own manager to run the orchard and employed armed guards and guard dogs to guard the said orchard. He also re-engaged the plaintiff's workers. The plaintiff produced receipts totaling $24,426.70 as to the expenses he had incurred since July 1987 and also his workers' salary sheets showing payment of $25,899. He had also expended about $15,000 on food for his workers since July 1987. At the time of the plaintiff's application, the second defendant had also tendered out the management of the said orchard and had since 1 June 1988 sold the durians that had dropped.

The plaintiff further affirmed that in the circumstances damages would not be an adequate remedy and his delay in coming to court was because of the negotiations pending settlement. He had undertaken to file the writ within 14 days (it was filed the following day) and undertook to pay damages should the court be hereafter of the opinion that the first and second defendants had sustained any loss as a result of the order applied for by him.

On 20 June 1988, the first defendant applied by summons-in-chambers for an order that the injunction granted on 15 June 1988 be dissolved and that the plaintiff be restrained whether by himself, his servants or agents from managing, dealing with, interfering or entering the said land until further order and costs. They also enclosed three affidavits to support the application.

The affidavit of Edwin Chew stated that he was only prepared to engage the plaintiff from 10 May 1988 after consulting the first defendant. He also denied all the other facts in the plaintiff's allegations and averred that it was the plaintiff who had made an offer of $2,500 per month to be engaged as manager of the orchard or 35% of the harvest proceeds. Edwin Chew had told the plaintiff then that that was not acceptable and counter-offered for a higher offer by way of advertisement acceptable to the defendants, that the plaintiff pay all his workers and meet all costs and expenses and that he drop all claims against TESB. When the plaintiff was told that the defendants were not engaging him, he insisted on a sum of $50,000 for maintaining the orchard from the time of his appointment and $10,000 for the period he worked.

The second affidavit by Dunstan Dominic Augustine only admitted that he visited the orchard on 9 April 1988 on a routine check but denied all the other allegations by the plaintiff. The third affidavit was by Rajandra Prasad, the manager of the first defendant, who denied all the plaintiff's allegations but said that Dunstan, one of its servants, had gone to the orchard in April 1988 for a routine inspection.

In his arguments, learned counsel for the defendants submitted that the plaintiff had no right to the injunction in view of s 20(1)(a) and (b) and s 54(f) of the Specific Relief Act 1950. He added that the contract (YLB-1 at encl 1) was between the plaintiff and TESB who was the chargor of the said land with the first defendant as chargee. The second defendant had been duly appointed as the manager and receiver of TESB (YLB-3 of encl 1) and the relevant form was duly registered with the Registrar of Companies and the notice served on TESB. In view of the terms of appointment and the debenture, he stated that the second defendant was therefore the agent of TESB and going by cl 9(1) of the debenture the second defendant had the power to go into possession of the said land.

Counsel further argued that the plaintiff could not have a case against either one or both defendants as his remedy is only against TESB for breach of contract. The first defendant had only acted upon the terms of the charge in their favour. There was also no irreparable damage caused to the plaintiff and in any case he could adequately be awarded damages.

At the time of hearing, counsel said that it was a most critical period as the plaintiff had come upon the said land at the time of the durian harvest and there was no one to supervise operations. He said that status quo had to be maintained by letting the defendants manage the orchard and account for all fruits and expenses which would go into the TESB's account thereby reducing the loan. He also emphasized that the first defendant was quite willing to pay damages if necessary for the dissolution of the earlier injunction. Being a bank, he said, the first defendant was in a better position to pay and the plaintiff would be adequately protected.

Learned counsel for the plaintiff replied that the plaintiff had contended that the second defendant had represented to him that the contract between the plaintiff and TESB would be continued and this was in fact an issue to be tried. In consequence, the plaintiff had expended more money on the project. Further, the second defendant never terminated the said contract and had stepped into the shoes of TESB. In effect, therefore, they had adopted the contract which was not a contract of service. In the circumstances, compensation would not be adequate for the plaintiff as vast sums of money had been expended.

He added that the plaintiff would continue to incur more losses if the highest offer is not accepted as a result of the second defendant's advertisement. The second defendant also did not appoint the new manager on their appointment as manager and receiver but some three weeks later after the plaintiff had spent more money on the orchard in view of the second defendant's representation to him. Counsel also informed the court that the appeal on the connected charge action was still pending in the Supreme Court.

Having marshalled all the facts and considered the arguments and affidavits, it is not disputed that the plaintiff had been engaged by TESB in May 1987 to manage the orchard from May that year and the court also accepts the fact that the plaintiff must have incurred some expenditure in the management of the said orchard. It is also clear that TESB is the chargor of the said land charged to the first defendant and that the second defendant was appointed receiver and manager by the first defendant only on 10 May 1988.

As had been stated earlier, learned counsel for the defendants had undertaken to pay damages suffered by the plaintiff by reason of the dissolution of the injunction given on 15 June 1988 if the court is of the view that the situation is such at the hearing of the main suit. Learned counsel had also insisted that an injunction was not in order as the plaintiff could be adequately compensated. However, learned counsel for the plaintiff had submitted otherwise as to the adequacy of the compensation and had stressed that the second defendant did not actually terminate the contract between TESB and the plaintiff on their appointment as receiver and manager. They had therefore merely literally stepped into the shoes of TESB.

In the circumstances, the court was guided by what is stated in *Palmers' Company Law* at pp 624-625 at para 46-08 and I quote the relevant excerpts:

> The appointment by the debenture holders of a receiver and manager as agent of the company, not being an appointment under an order of the court, does not of itself automatically terminate contracts of employment previously made and subsisting between the company and all its employees. In three exceptional circumstances, however, such an appointment will result in termination of employment contracts, viz:
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> (1) where the appointment of a receiver is accompanied by a sale of the business of the company;
> (2) where the receiver enters into a new agreement with a particular employee that may be inconsistent with the old contract;
> (3) where the continuation of the employment of a particular employee is inconsistent with the role and function of a receiver and manager.

I was of the view that the plaintiff was employed by TESB as affirmed by him at para 3 of his affidavit at encl 1 dated 15 June 1988 and upon perusal of 'YLB-1' attached to the said affidavit. Since this contract had not been terminated by the second defendant on their appointment as receiver and manager and that none of the three situations stated in *Palmer's* apply as quoted above, I came to the conclusion that upon a balance of convenience, it was better for the status quo to be maintained as at the grant of the injunction granted on 15 June 1988.

In the circumstances, I dismissed the defendants' summons-in-chambers with costs.

Application dismissed.

Solicitors: *Yeoh Kian Teik & Co*; *Concisom & Co.*

Reported by *PS Ranjan*

Cocoa Processors Sdn Bhd v United Malayan Banking Corporation Bhd & Ors

HIGH COURT (PENANG) – SUIT NO 23-102-87
MOHAMED DZAIDDIN J
15 APRIL 1988

Civil Procedure – Ex parte interim injunction to restrain defendants from disposing of and dealing with assets of plaintiff – Application to set aside injunction – Whether serious question to be tried – Non-disclosure of material facts – Injunction dissolved

In these applications, the defendants seek an order that the interim injunction granted to the plaintiff on 3 April 1987 be dissolved. By the said order the defendants were restrained from disposing of, selling or dealing with the assets of the plaintiff pending the final determination of the plaintiff's action and/or until further order. The third, fourth, fifth and sixth defendants, being receivers and managers appointed under the debentures, were restrained from, inter alia, issuing any prospectus or releasing information pertaining to the trade and production methods of the plaintiff to a third party.

The plaintiff is a limited company incorporated in Malaysia carrying on the business of cocoa processing. The first and second defendants are bankers and are the main financiers of the plaintiff's business, and pursuant to the various credit